



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, TUNOI & LAKHA, J.J.A.)

CIVIL APPEAL NO. 5 OF 1998

BETWEEN

JULIUS NYUMU.....1ST APPELLANT

MWANGI KINUTHIA.....2ND APPELLANT

ELIJAH NGUGI KIMWAKI.....3RD APPELLANT

MWANGI MUCHURI4TH APPELLANT

AND

GITHUNGUURI CONSTITUENCY RANCHING CO. LTD ...1ST RESPONDENT

REBECCAWARINGA NJOROGE.....2ND RESPONDENT

WAIRA KAMAU3RD RESPONDENT

PETER KAMUNGE.....4TH RESPONDENT

WANJIRU MATHERI5TH RESPONDENT

LUCIA WAMBUI KARIUKI.....6TH RESPONDENT

JOSEPHINE WANJERI MUTHAMA.....7TH RESPONDENT

IKABA MUKUNDI.....8TH RESPONDENT

(Appeal from the judgment and decree of the high court of Kenya at Nairobi (Hon. Mr. Justice Kuloba) dated 31st July,

In

H.C.C.C. NO. 2573 OF 1998)

JUDGEMENT OF THE COURT

This is an appeal from the judgment of the superior court (kuloba, j) given on the 31st July 1996 dismissing the plaintiffs' case. The case was fixed, by consent; on the 7th may 1996 for hearing on 31st July 1996 but Mr. Nduati, then for the plaintiffs, was ready and although he had his witness, he did not call him to give evidence. The learned judge in the interest of justice adjourned to 12.00 p.m., 3 hours later. Yet Mr. Nduati led no evidence for the plaintiffs. In our judgment, there was no other course for the learned judge to take. The learned judge acted judicially and reasonably and did not err in principal or otherwise in entering judgment as he did. We heard nothing in support of the appeal to disturb and the learned judge's judgment. There was no merit in this appeal and it is dismissed with costs.

Dated and delivered at Nairobi this 22nd day of July 1998

R.O.KWACH

JUDGE OF APPEAL

P.K.TUNOI

JUDGE OF APPEAL

A.A. LAKHA

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR